

BEFORE THE  
FEDERAL AVIATION ADMINISTRATION  
OFFICE OF THE CHIEF COUNSEL  
WASHINGTON, D.C.

Complaint of	)	
	)	
	)	
DOUPE SERVICES LLC d/b/a CURTIS AIR	)	<b>DECLARATION OF</b>
TAXI AND JOBS LANE AVIATION, LLC	)	<b>SUPERVISOR</b>
	)	<b><u>PETER VAN SCOYOC</u></b>
	)	
	)	FAA-2022-0542
	)	No. 16-22-05
	)	

**PETER VAN SCOYOC**, being duly sworn deposes and says as follows:

1. I am the Supervisor of the Town of East Hampton (the “Town”). I have held this office since January 2018. Prior to that, I served the Town as Deputy Supervisor and Town Councilman. I have been very involved with the East Hampton Airport (“HTO”) in these roles and have personal knowledge of the impacts—good and bad—that HTO has on the community. I have personal knowledge of the matters set forth herein, except those matters stated to be upon information and belief, and as to those matters, I believe them to be true.

2. I submit this declaration in support of the motion to dismiss or for summary judgment with respect to the Complaint of Doupe Services d/b/a Curtis Air Taxi and Jobs Lane Aviation, LLC filed on April 18, 2022.

3. The Town is the owner and sponsor of HTO. Although HTO is a Town-owned asset, the Town has not been able to assert meaningful local control over HTO due to federal obligations. Nearly all of those federal obligations expired in September 2021, however, and now the Town is trying to terminate the remaining federal obligations—which the FAA told the Town can be achieved by closing or “deactivating” HTO and opening a new private-use airport—so that the Town can exert local control over aviation operations that occur in the Town. The Town has

worked tirelessly to this end and is now on the verge of obtaining the local control it has sought for decades. The Town has also committed to undertaking a full-blown environmental review under the State Environmental Quality Review Act (“SEQRA”) prior to implementation of any operational limitations.

4. It is my belief, based on community feedback, that if a modified airport is not permitted to operate, the only viable alternative will be permanently closing HTO and repurposing the land for a non-aviation use. There are no circumstances under which the majority of the community would tolerate keeping HTO as a public-use airport. Generally speaking, as an elected representative it is my duty to listen to all constituents and act to effectuate what I understand to be the preference of the majority of constituents. In this case, that means either modifying the airport or closing it altogether.

5. As a general matter, when an airport “sponsor,” such as the Town, accepts federal funding, the sponsor commits to “grant assurances.” Upon information and belief, the grant assurances are contractual obligations that require airport sponsors, like the Town, to do or not do certain things. As a practical matter, they effectively remove the sponsor’s ability to exert local control over the airport notwithstanding that the sponsor owns the airport. It is my understanding that the list of grant assurances that generally apply to airports that accept federal funds is located here: [https://www.faa.gov/airports/aip/grant\\_assurances/](https://www.faa.gov/airports/aip/grant_assurances/).

6. Upon information and belief, the federal grant assurances obligated the Town to operate HTO for 20 years from the date funds were last received. This meant that HTO was federally obligated until September 2021—that is, 20 years after it last accepted federal funds in September 2001.

7. Upon information and belief, there are also federal statutory assurances that apply

to an airport that receives federal airport funds. The FAA has informed the Town that these statutory assurances terminate upon closure of an airport. Attached hereto as **Exhibit 1** is a true and correct copy of the FAA letter dated November 6, 2020. This letter contains the FAA's explanation that closure of HTO would terminate all federal obligations. Indeed, HTO will permanently close on May 17, 2022, and accordingly all of the federal obligations—both contractual and statutory—will be extinguished at that time.

8. For context, it is my understanding that in 1994—in the midst of significant debate over whether and how HTO fit within the East Hampton community—the Town accepted federal funding for airport improvements. Attached hereto as **Exhibit 2** is a true and correct copy of a full list of grant assurances accepted by the Town.

9. Upon information and belief, following the runway expansion in the late 1990s, the Town saw a steady but manageable increase in air traffic, which was accompanied by increased noise pollution and greenhouse gas emissions. Specifically, HTO—historically more local than commercial in character—became a mainstay for commercial operators, particularly during the busy season from Memorial Day to Labor Day. During the busy season, HTO commonly experienced 400 or more operations (*i.e.*, takeoffs or landings) in a single day, or approximately one every 90 seconds during daylight hours. Upon information and belief, an overwhelming majority of these operations were conducted by commercial operators pursuant to Part 135.

10. Upon information and belief, in 2003, a group of East Hampton residents upset with HTO-related noise and pollution filed a lawsuit against the FAA and the Department of Transportation, seeking to block the provision of federal funds to the Town (which would have, in turn, eventually freed the Town to regulate air and noise pollution).

11. Upon information and belief, that 2003 litigation resulted in a 2005 settlement

agreement (the “2005 Settlement”). Attached hereto as **Exhibit 3** is a true and correct copy of the 2005 Settlement.

**12.** Under the terms of the 2005 Settlement, the FAA agreed that it would not enforce certain grant assurances with respect to HTO after December 31, 2014, such that the Town could exert local control over HTO’s operations and respond to community concerns over the rapid growth in operations at HTO.

**13.** It is my understanding that in 2011, then-United States Representative Timothy Bishop—whose district included the Town—submitted a letter to the FAA asking for the FAA’s position on the legal effect of the 2005 Settlement vis-à-vis the Town’s ability to adopt localized regulations for HTO (the “Bishop Letter”).

**14.** It is my understanding that the FAA responded to the Bishop Letter in a letter of its own, explaining its view that (1) under the 2005 Settlement, the FAA would not enforce against the Town certain grant assurances that had prevented the town from restricting access to HTO; and (2) the Town was relieved from its obligations under the Airport Noise and Capacity Act of 1990 (“ANCA”). Attached hereto as **Exhibit 4** is a true and correct copy of the Bishop Letter and the FAA’s response.

**15.** As a result of the FAA’s response to Representative Bishop, the Town began the process of developing three local laws that would create reasonable restrictions on operations at HTO. The Town believed it had the right to do so based on the FAA’s letter and thus conducted a thorough public engagement process to determine what changes the community wanted to see at HTO. This culminated in three local laws being enacted.

**16.** The first local law created a baseline curfew for all aircraft; the second created a more robust curfew for “noisy” aircraft; and the third created a one-round-trip-per-week limit for

noisy aircraft (collectively, the “Local Laws”). See Town Code 75-38 (2015) and Town Code 75-39 (2015). Attached hereto as **Exhibit 5** is a true and correct copy of the Local Laws.

17. Under the 2015 Local Laws, an aircraft was considered “noisy” when it produced a measurable sound level of 91.0 EPNdB or higher. This is an objective standard reflected in an FAA Advisory Circular. The Town worked with noise consultants to arrive at this noise threshold in an effort to obtain meaningful relief for residents while still allowing aviation stakeholders to operate at HTO. See Town Code 75-38 and Town Code 75-39.

18. In 2015, despite the Town’s reliance on the FAA’s response to Representative Bishop, aviation stakeholders sued the Town and tried to invalidate the 2015 Local Laws. After litigation in federal court, the Town’s laws were struck down as the court found that the 2015 Local Laws were impermissible under a federal statute called the “Airport Noise and Capacity Act of 1990” or “ANCA.” It is my understanding that the court made clear that the Town must either comply with ANCA’s regulatory process for enacting restrictions or convert HTO from being a “public use” airport to a “private use” airport. See *Friends of East Hampton, Inc. et al v. The Town of East Hampton*, 841 F.3d 133 (2d Cir. 2016).

19. After the Second Circuit’s decision in *Friends of East Hampton Airport*, the Town continued to assess its options for implementing commonsense noise, pollution, and safety controls at HTO. Because the Town could not convert HTO into a “private use” airport at that time, the Town initiated a “Part 161” study to try and establish noise and access restrictions compliant with ANCA.

20. But in 2019, after years of discussions with the FAA and considerable expenditure, it became clear to the Town that progress via Part 161 was impracticable. For example, it is my understanding that Part 161 assesses noise impacts by looking at average daily noise impacts,

which would understate noise impacts at a seasonal airport like HTO. The Town was also made aware that no airport in the United States has *ever* successfully obtained Part 161 relief.

**21.** The Town ultimately decided that a Part 161 process was not viable and thus it turned its attention to its only other option it had if the community decided that it wanted to have an airport available in the community: converting HTO from a “public use” airport to a “private use” airport. If this conversion could not occur, it is my belief that the only way forward would be to close HTO and not open a new airport. I do not believe that the community would tolerate keeping HTO as a public-use airport due to the issues it has caused over the past few decades.

**22.** The Town thus began a discussion with the FAA regarding its options. As a part of those early discussions, on May 6, 2020, Elliott Black—then the Director of Airport Policy (ARP-3) for the FAA—sent the Town two documents to explain that public entities can operate private-use airports subject to a prior permission required (“PPR”) framework. The first document provided by the FAA showed publicly owned airports that are designated for private use. The second document provided by the FAA showed airports that transitioned from public-use to private-use. Attached as **Exhibits 6–7** are true and correct copies of the public entity documents received from the FAA.

**23.** Continued discussions with the FAA in 2020 culminated in a November 2020 letter from the FAA, outlining the Town’s options upon expiration of the grant assurances in September 2021: (1) negotiation of an agreement for mandatory restrictions on aircraft operators per ANCA as set forth in 14 C.F.R. §§ 161.101, *et seq.*; (2) closure of HTO after the grant assurances expire (September 2021) and the opening of a new private-use airport; (3) complete closure of the airport after the grant assurances expire (September 2021); or (4) continued operation of the airport as a public-use airport. *See Exhibit 1.*

24. In the November 2020 Letter, the FAA confirmed that closing HTO would “extinguish[]” the Town’s statutory obligations (called “FAA obligations”) and authorize the Town to open “a private-use airport” using a prior permission required framework:

Option 2 considers that the federal grant assurances will expire after September 26, 2021 at which time the federal obligation to keep the airport open expires. The Town can close the airport, use the remaining funds in the airport account as it desires, dispose of the land, or not. ***The remaining FAA obligations, such as Exclusive Rights, Revenue Use, Civil Rights, are extinguished upon closure.*** The Town of East Hampton can then choose to change the use of the airport from public to private use.

The Town could also re-open as a traditional public-use airport or as ***a private-use airport made available to others by the Town through authorized rights or by requiring prior permission.*** A private-use airport would not be eligible for inclusion in the NPIAS or FAA funding. The Town would still need to comply with New York State private-use airport requirements and standards.

#### **Exhibit 1.**

25. With the knowledge that the Town had the FAA’s guidance regarding the future of HTO, the Town retained experts, prepared studies, and began outreach to the community to assess whether to keep the airport as is, modify the airport to mitigate the issues that had long plagued the community, or close the airport and repurpose the land for non-aviation uses. True and correct copies of the Town retained experts’ studies and community outreach documents can be found here: <https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro>. All these documents informed the Town’s process moving forward and, in one way or another, led the Town to the decision to close HTO and open a new, private-use airport.

26. In 2021, the Town solicited reports from five different subject-matter experts, who advised the town on the potential environmental, economic, zoning, and noise effects of changes to HTO.

27. Also in 2021, the Town engaged SEQRA counsel to design a comprehensive study

of environmental factors and help ensure compliance with SEQRA's procedural and substantive requirements.

**28.** The Town's economic consultants analyzed the financial impact of modifying operations at HTO, including by conducting two on-the-ground surveys geared toward determining how airport users would react if HTO were closed outright. The consultants concluded that, even if East Hampton opted not to sponsor an airport, it would not meaningfully impact the Town financially.

**29.** The Town's environmental consultant assessed greenhouse gas emissions from aircraft utilizing HTO. The consultant determined that while aircraft at HTO are responsible for 6% of the Town's emissions, only 1% of the Town's residents use HTO.

**30.** The Town's aviation noise consultant conducted several separate analyses on possible diversion of flights to other airports, annual operational data, annual complaint data, and historical noise impacts.

**31.** Through modeling analysis of known aircraft flight data, the aviation noise consultant concluded that charter helicopter operators have been largely uncooperative with the Town's voluntary noise abatement routes, choosing instead to fly directly over crowded residential areas, sometimes at dangerously low altitudes (*e.g.*, 400 feet or lower directly above rooftops). The aviation noise consultant also found that operations had significantly increased when compared to operations in 2015.

**32.** The Town's zoning and planning consultant prepared a report demonstrating that, due to HTO's unusual location and proximity to East Hampton's main aquifer, HTO could, as needed, be converted for alternative non-airport uses that would benefit large portions of the community (*e.g.*, open recreational field space).



**33.** The Town tasked its SEQRA counsel to help the Town design a data-driven environmental study measuring potentially significant environmental impacts resulting from closing HTO and opening a private-use airport and the implementation of a suite of long-term controls to manage noise and other environmental impacts. Mr. Ruzow advised that the Town should collect *actual* operations data as opposed to “tabletop” (*i.e.*, simulated) data, in order to most accurately study the environmental impact, if any, of the Town’s options for controlling operations at the new, private-use airport when preparing a draft generic impact statement pursuant to SEQRA. In fact, the Town was already in the midst of completing a tabletop study and thus the only way to obtain better information than the Town already had would be through collection of actual data.

**34.** These expert studies discussed above coupled with updates and reports from the Town’s aviation counsel, Cooley LLP, culminated in ten public presentations between May and October 2021 and a series of four community engagement sessions in October 2021.

**35.** These community engagement sessions allowed every interested stakeholder to submit public comments on the future of HTO; interact and engage with fellow community members; and review the Town’s consultant reports in an open and communal setting. It is my understanding that none of the Complainants to this matter participated in the public process or submitted comments regarding the future of the airport.

**36.** The Town hired Lisa Liquori to organize and oversee the community feedback sessions. Ms. Liquori was also hired to summarize the community’s feedback and present a report to the Town Board outlining the consensus view. Attached hereto as **Exhibit 8** is a true and correct copy of Ms. Liquori’s report.

**37.** After reviewing all of the expert reports and understanding the community’s views

as set forth at the four community engagement sessions, the Town understood its mandate: pursue the close-and-open option recommended by the FAA, Option 2 set forth in the November 2020 letter, so that the Town could sensibly regulate HTO in a manner that carefully balances community needs while retaining a safe and capable airport to serve aviation stakeholders.

**38.** Throughout this process, the Town has at all times worked closely with the FAA. I estimate that I have had no fewer than 10 calls with the FAA. On these calls, the FAA typically has more than five attendees (sometimes many more than that) from all different business units within the agency. It is my understanding that the Town's aviation counsel has had more than one call per week with the FAA since the beginning of January 2022 and that the entire process of effectuating Option 2 has been a joint effort. Attached hereto as **Exhibits 9–23** are true and correct copies of the Town press releases outlining major milestones related to this process, including collaboration with the FAA.

**39.** On January 20, 2022, the Town filed two Form 7480-1s with the FAA—notifying the FAA that the Town planned to deactivate HTO on February 28, 2022, and open the private-use airport on March 4, 2022. The Town chose these dates to ensure that the closure-and-opening process would minimize disruption to aviation. Attached hereto as **Exhibits 24–25** are true and correct copies of the two Form 7480-1s.

**40.** On January 21, 2022, the Town's aviation counsel provided the NYSDOT with the Form 7480-1s that had been submitted to the FAA one day prior. It is my understanding that NYSDOT confirmed that it wanted to be kept apprised of the process but did not have a direct role in the process. It is my understanding that the Town's aviation counsel has consulted with NYSDOT on no less than seven occasions since January 2022 regarding this process. It is my understanding that at no point has NYSDOT asked the Town to submit any forms, complete any

processes, or otherwise do anything specific beyond send copies of the Form 7480-1s and keep NYSDOT updated.

**41.** On February 2, 2022, the FAA sent the Town a letter outlining several issues the FAA was concerned about regarding its internal processes as it related to the Town's timing for deactivation and activation. All these issues have since been addressed. Attached hereto as **Exhibit 26** is a true and correct copy of the February 2, 2022 FAA letter.

**42.** On February 16, 2022, the FAA suggested—and the Town agreed—that the Town postpone the deactivation of HTO from February until May 17, 2022. Attached hereto as **Exhibit 27** is a true and correct copy of the February 17, 2022 press release outlining this decision.

**43.** In the following weeks, the Town and FAA checked off each and every mandatory item discussed in the FAA's February 2, 2022 letter, obtaining approval for: a private air traffic control tower at a private-use airport; a process to finalize agreements between the Town and FAA air traffic controllers; establishment of the Town's communication, navigational, and weather aids; transfer of certain equipment to the Town, such as runway end identifier lights; approval of special use instrument procedures at the new airport; and provision of a new LocID for the private-use airport ("JPX").

**44.** On March 18, 2022, the FAA completed its airspace analysis finding "no objection" to the Town's plan to activate the private-use airport on May 19, 2022, at 09:00 am local time. Attached hereto as **Exhibit 28** is a true and correct copy of the March 18, 2022 letter of determination.

**45.** On March 22, 2022, the FAA completed its airspace analysis finding "no objection" to the Town's plan to deactivate HTO on May 17, 2022, at 11:59 pm local time. Attached hereto as **Exhibit 29** is a true and correct copy of the March 22, 2022 letter of determination.

46. On March 24, 2022, the new private-use airport was assigned a new airport identifier, or “LocID.” The FAA issued the identifier of “JPX.” It is my understanding that this LocID can only be issued once the airport has been approved by the FAA. The FAA also confirmed that JPX will be active on May 19, 2022. Attached hereto as **Exhibits 30–32** are true and correct copies of the FAA’s notices and location identifier assignment.

47. On April 22, 2022, the FAA confirmed that the Town’s special use instrument procedures had been approved and would be available for use on May 19, 2022. It is my understanding that Complainant Jobs Lane has applied for authorization to use the special procedures when JPX opens.

48. The Town is currently (at the time of this declaration being filed with the Department) finalizing letter agreements with internal groups within FAA (*e.g.*, air traffic controllers) and completing the transfer of equipment between the FAA and Town.

49. Due to the coordinated effort between the Town and the FAA, all safety and operational capabilities of HTO will be available at JPX upon opening on May 19, 2022. As a result, JPX will be materially identical to HTO, but for the Town’s new ability to legally exert local control consistent with federal law.

50. While all of this was happening, the Town was complying with SEQRA to ensure compliance with applicable environmental laws. Over 500 public comments have already been received. The Complainants did not participate in this process.

51. On March 1, 2022, the Town presented to the community a proposed PPR framework for the 2022 SEQRA data collection period. Attached here to as **Exhibit 33** is a true and correct copy of that presentation.

52. On April 12, 2022, the Town presented the final PPR framework for the 2022

SEQRA data collection period. Attached hereto as **Exhibit 34** is a true and correct copy of the 2022 data collection PPR.

**53.** On April 15, 2022, the FAA published a notice in the Federal Register regarding closure of HTO and opening of JPX. Attached hereto as **Exhibit 35** is a true and correct copy of the Federal Register publication.

**54.** On April 21, 2022, the Town amended Chapter 75 of the Town Code, which relates to “Airports,” so that the Town Code reflected a private-use airport. Attached hereto as **Exhibit 36** is a true and correct copy of the amended Town Code.

**55.** The Town also finalized rules and regulations to govern JPX. Attached hereto as **Exhibit 37** is a true and correct copy of the rules and regulations, including the trial PPR that will govern the 2022 SEQRA data collection process.

**56.** It remains the case, and the Town has repeatedly stated, that the Town is pursuing this airport process with a goal of disrupting aviation as little as possible or, hopefully, not at all. Attached hereto as **Exhibits 38–41** are true and correct copies of pertinent Press Releases and Letters.

**57.** Since the beginning of 2021, the Town has had more than 15 public work sessions dedicated to the airport in some capacity, issued numerous press releases, passed several resolutions, and engaged in public discourse regarding the future of HTO. All these materials are available on the Town’s website, [www.ehamptonny.gov](http://www.ehamptonny.gov). Historical documents regarding the

airport and the 2015 Local Laws are available at <https://ehamptonny.gov/745/Airport-Public-Engagement-Process> and at [www.htoplanning.com](http://www.htoplanning.com).

58. It is my understanding that private-use airports are expressly permitted to operate subject to prior permission required rules. Upon information and belief, the FAA has made this clear in several publications. Attached as **Exhibit 42** is a true and correct copy of one such publication.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 9, 2022.

  
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PETER VAN SCOYOC

## **APPENDIX 1**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>
<b>EXHIBIT 1</b>	FAA letter dated November 6, 2020
<b>EXHIBIT 2</b>	Full list of grant assurances accepted by the Town
<b>EXHIBIT 3</b>	2005 Settlement in the <i>Committee to Stop Airport Expansion v. FAA</i> , 320 F.3d 285
<b>EXHIBIT 4</b>	Rep. Tim Bishop Letter
<b>EXHIBIT 5</b>	Town of East Hampton Code
<b>EXHIBIT 6</b>	NFDC extract airports that are Publicly Owned but private use
<b>EXHIBIT 7</b>	NFDC extract Publicly Owned airports that transitioned from Public-use to Private
<b>EXHIBIT 8</b>	Town's Draft Re-Envisioning Public Engagement Report, dated December 23, 2021
<b>EXHIBIT 9</b>	Town of East Hampton Press Release dated August 3, 2020
<b>EXHIBIT 10</b>	Town of East Hampton Press Release dated June 28, 2021
<b>EXHIBIT 11</b>	Town of East Hampton Press Release dated August 17, 2022
<b>EXHIBIT 12</b>	Town of East Hampton Press Release dated August 23, 2021
<b>EXHIBIT 13</b>	Town of East Hampton Press Release dated October 11, 2021
<b>EXHIBIT 14</b>	Town of East Hampton Press Release dated January 18, 2022
<b>EXHIBIT 15</b>	Town of East Hampton Press Release dated January 20, 2022
<b>EXHIBIT 16</b>	Town of East Hampton Press Release dated February 3, 2022
<b>EXHIBIT 17</b>	Town of East Hampton Press Release dated February 17, 2022
<b>EXHIBIT 18</b>	Town of East Hampton Press Release dated February 18, 2022
<b>EXHIBIT 19</b>	Town of East Hampton Press Release dated March 8, 2022
<b>EXHIBIT 20</b>	Town of East Hampton Press Release dated March 22, 2022
<b>EXHIBIT 21</b>	Town of East Hampton Press Release dated March 23, 2022
<b>EXHIBIT 22</b>	Town of East Hampton Press Release dated March 24, 2022
<b>EXHIBIT 23</b>	Town of East Hampton Press Release dated March 29, 2022
<b>EXHIBIT 24</b>	Form 7480-1 dated January 20, 2021 re Activation of New Airport
<b>EXHIBIT 25</b>	Form 7480-1 dated January 20, 2021 re Deactivation of East Hampton Airport
<b>EXHIBIT 26</b>	FAA letter February 2, 2022
<b>EXHIBIT 27</b>	Town of East Hampton Press Release dated February 17, 2022
<b>EXHIBIT 28</b>	FAA Notice of Airport Airspace Determination re East Hampton Airport Deactivation dated March 18, 2022
<b>EXHIBIT 29</b>	FAA Notice of Airport Airspace Determination re East Hampton Airport Deactivation dated March 22, 2022
<b>EXHIBIT 30</b>	FAA Notice of Airport Airspace Analysis Determination Establish Private Use Airport, dated March 18, 2022
<b>EXHIBIT 31</b>	FAA Notice of Airport Airspace Analysis Determination Deactivate Landing Area, dated March 22, 2022

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>
<b>EXHIBIT 32</b>	FAA location identifier is JPX, dated March 24, 2022
<b>EXHIBIT 33</b>	SEQRA Study Phase and Data Collection Proposed PPR Framework for 2022 Season, dated March 1, 2022
<b>EXHIBIT 34</b>	PPR framework for the 2022 SEQRA data collection period
<b>EXHIBIT 35</b>	Federal Register publication
<b>EXHIBIT 36</b>	Amended Town Code
<b>EXHIBIT 37</b>	Rules and regulations, including the trial PPR that will govern the 2022 SEQRA data collection.
<b>EXHIBIT 38</b>	Town of East Hampton Press Release dated January 18, 2022
<b>EXHIBIT 39</b>	Town of East Hampton Press Release dated January 20, 2022
<b>EXHIBIT 40</b>	Town of East Hampton Press Release dated February 17, 2022
<b>EXHIBIT 41</b>	Town of East Hampton Press Release dated February 18, 2022
<b>EXHIBIT 42</b>	Advisory Circulate 150/5200-35